IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1424 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MOHANLAL NATHALAL MARVADI

Versus

ALABAX NARBHAI SHAIKH

Appearance:

1. Civil Revision Application No. 1424 of 2001

MR DP KINARIWALA for Petitioner No. 1

MR UDAY R BHATT for Respondent No. 1

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 11/12/2001

ORAL JUDGEMENT

#. Mohanlal Nathalal Marvadi the applicant original appellant has filed this Revision Application challenging the judgment and order dated 1.11.2001 passed by the

Appellate Bench of the Court of Small Causes at Ahmedabad in Appeal from Order No. 95 of 2001. By the impugned judgment the Appellate Bench has dismissed the appeal filed by the appellant-applicant herein. The Appellate Bench has confirmed the judgment and order dated 18.9.2001 passed by the Judge, Court of Small Causes No.13, Ahmedabad passed order below exh.. 53 in Darkhast No. 103 of 1982.

#. The facts giving rise to the present Revision Application are as under:

2.1 The respondent-plaintiff Alabax Nurbhai Shaikh had filed HRP Suit No. 1409 of 1988 against tenant-Hiraben. In the said proceedings a decree was passed against the tenant Hiraben ion 6.2.1998. The present respondent thereafter has filed execution petition No. 103 of 1998 on 3.7.1998 wherein a possession warrant has been issued against the judgment debtor and a jungam warrant was also issued. It is a matter on record that while executing the possession warrant the premises was identified and the executing officer has also tallied its four corners and out of the three premises the possession of two premises were handed over to the plaintiff viz. the present respondent and it reveals from the record of this case that for rest of one premises, the defendant to the suit has promised to vacate the premises within one month and to hand over the same to the plaintiff land[lord. Thus on the said grounds at the request of the judgment debtor possession of one premises was not taken as the judgment debtor had promised to vacate the premises within one month. Thereafter instead of handing over the possession to the respondent, the original judgment debtor Bai Hira moved application exh.16 which is an obstruction application, whereby she had prayed that the respondent landlord may be restrained from parting with the possession of two premises which they have recovered from her and she has also prayed that the respondent-landlord be restrained from taking the possession of remaining one room from her. In that show cause notice was issued and in the meantime she filed Civil Appeal No. 38 of 1999 before the Appellate Bench of the Court of Small Causes and she obtained stay against the execution of the degree. In the said Civil Appeal she has challenged the decree passed in HRP Suit No.1409 of 1988. The said appeal was not admitted as the delay was not condoned and therefore, the earlier stay granted was extended and the judgment debtor-Hiraben again filed Revision Application no. 596 OF 1999 before this Court. The said Revision Application was also rejected on 28.7.1999. The order of the Appellate Bench

as well as the order of this Court are on record of this case.

2.2. Thus after having finished the first round of challenging the validity of the decree passed in HRP Suit No. 1409 of 1988, it is matter of record that the present appellant has filed one HRP Suit No.. 1316 of 1999 wherein he has prayed that he is a tenant of the premises bearing survey No.42/36/A/23 and the respondent may not take possession without following due process of law. The said suit was also resisted by the defendant wherein the court has made the rule absolute during the pendency of the suit against which present respondent filed Appeal From Order No.. 73 of 2000 which is also rejected by the Appellate Bench. The Appellate bench in the order portion of the said A.F.O. specifically made an order that the respondent is not debarred or prevented from proceeding with the execution application NO. 103 of 1998 in a lawful manner. Simultaneously, it was also made clear that the respondent no.1 namely, the present appellant is also entitled to raise any legal objection in the Execution Petition. Thereafter the present appellant has moved an application NO. 23.07.2000 vide exh. 53 an obstruction application and has prayed that the decree passed in HRP Suit No. 1409 of 1988 is not binding to him nor the same can be executed against as the survey number of the premises under decree and the survey number of the premises in possession of the appellant are altogether different.

2.3 That application was highly contested and the learned trial Judge after having heard the parties at length has rejected the application on 18.9.2001

#. Being aggrieved by the said order present appellant filed Appeal from Order No. 95 of 2000 before the Appellate Bench of the Court of Small Causes, Ahmedabad.

#. The Appellate Bench of the Court of Small causes has considered all the submissions made by the learned advocate Mr. P.G.Kinariwala. After exhaustive consideration of facts, the Appellate Bench has dismissed the appeal in this behalf.

4.1 Mr. Kinariwala learned advocate for the applicant has relied the decision of the Honourable Supreme Court reported in the case of Brahmdeo Chaudhary vs. Prasad Jaiswal & anor. reported in AIR 1997 SC 856 The Appellate Bench has carefully considered the submission of the learned advocate for the appellant that the

subject matter of the property of the earlier proceedings and the present proceedings are different. The Appellate Bench has held that the property of which possession is sought for is a part and parcel of the property for which the decree is passed. It was further held that the judgment-debtor is none else than the mother of the present respondent. The Appellate Bench also held that in this case partial possession was given and by elemency some time was given to the judgment debtor to hand over the possession. Instead of respecting the same, the judgment debtor has filed an appeal before the appellate bench. It was further held that no documentary evidence vis-a-vis rent receipt, rent note etc. has been produced by the present appellant to substantiate the say that he has a right to reside in the premises as a tenant. It is further held that no where the appellant has given the description of the property against which the respondent judgment creditor has filed Appeal from Order wherein the appellate bench has observed that the present appellant has deliberately avoided the description of the property whereas the decree clearly gives the description of the property for which the possession is sought. The Appellate Bench has further observed that the controversy which has been created by the present appellant in the application is totally false, concocted and with a view to retain the illegal possession of the property under the decree. There is nothing on record to show that the present appellant is the tenant of the premises nor has he produced any satisfactory evidence in this regard to substantiate his say. It was further observed that after ascertaining and identifying the premises, partial possession was delivered by the bailiff to the present respondent and because the respondent has shown mercy, he has given some time to to hand over the possession to the judgment debtor and the judgment debtor and her sons including the present appellant have started to obstruct the execution of the decree. It has been further observed that they have started this false litigation only on the alleged entry in the municipal records which cannot be be said to be conclusive proof or evidence and that too without giving any description of the premises or without producing any sort of concrete evidence which can establish the independent right of the present appellant as that of a tenant.

#. Mr. Kinariwala learned advocate for the appellant has relied upon the decisions of the Honourable Supreme Court in the case of Brahmdeo Chaudhary vs. Prasad Jaiswal & anor (Supra).

#. I have gone through the evidence on record. In my

view the learned Appellate Bench has rightly relied upon AIR 1955 Kutch 17 and AIR 1985 Kerala 203. The principles laid down by the Honourable Supreme Court is not contrary to or inconsistent with the principles laid down by these judgments. Therefore, I do not accept the contentions raised by the learned advocate for the applicant in this behalf. In the circumstances present Civil Revision Application deserves to be dismissed and the same is accordingly dismissed. No order as to costs.

#. Mr. Uday Bhatt learned advocate for the respondent has contended that in this case earlier Civil Revision Application No.596 of 1999 was dismissed on 28.7.1999. That fact has not been mentioned by the learned advocate for the applicant in this Revision Application and he has suppressed these facts. However, I do not decide the same because I have dealt with the matter on merits and I have dismissed the same.

(K.M.Mehta.J)

govindan